

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT of TENNESSEE
at CHATTANOOGA**

UNITED STATES OF AMERICA) 1:15-cr-39
)
 v.) Judge Collier
)
 ROBERT R. DOGGART) Magistrate Judge Lee

GOVERNMENT'S NOTICE TO THE COURT REGARDING "TRUE THREATS"

The United States of America by and through William C. Killian, United States Attorney for the Eastern District of Tennessee, Perry H. Piper, Assistant United States Attorney, and Saeed A. Mody, Trial Attorney for the U.S. Department of Justice, Civil Rights Division, hereby offer this notice to the Court regarding a recent United States Supreme Court case which addressed the level of proof required to establish a conviction under Title 18, United States Code, Section 875(c). The case in question, *Elonis v. United States*, 575 U.S. ___, slip op. No. 13-983 (June 1, 2015), addressed the required mental state that must be proven by the government in order to secure a conviction under Section 875(c). In *Elonis*, the Court stated, “[t]here is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat.” Slip op. at 16. Counsel for the government submits that the mental state requirement highlighted above has been satisfied by the facts in the instant case.

Under this Court's Local Rules, parties may not file (except under limited circumstances) a response to a reply brief. See, E. D. Tenn. L.R. 7.1. That rule provides in relevant part

(d) Supplemental Briefs. No additional briefs, affidavits, or other papers in support of or in opposition to a motion shall be filed without prior approval of the Court, except that a party may file a supplemental brief of no more than 5 pages

to call to the Court's attention developments occurring after a party's final brief is filed. Any response to a supplemental brief shall be filed within 7 days after service of the supplemental brief and shall be limited to no more than 5 pages.

Counsel for the government has discussed *Elonis* with counsel for the defendant (indeed, it was counsel for the defendant who sent the slip opinion to the government upon its release today). If the Court deems it necessary and appropriate, the parties request permission to file a supplemental brief addressing the *mens rea* issues raised in *Elonis* and how *Elonis* relates to the "true threat" framework in this case.

Respectfully submitted,

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United States Attorney

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Perry H. Piper
Assistant United States Attorney

By: s/ Saeed A. Mody
Saeed A. Mody
Trial Attorney
Civil Rights Division

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2015, this response was filed electronically, and notice of its filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Any parties not listed as being served by the Court's filing system will be served by regular United States mail, postage prepaid.

s/ Perry H. Piper
Perry H. Piper
Assistant United States Attorney